

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

NO. 1:18-CR-00092-MR-DLH

UNITED STATES OF AMERICA)	
)	
v.)	MOTION TO CONTINUE
)	DOCKET CALL/ TRIAL
JAMES E. MACALPINE,)	
Defendant.)	

The Defendant, through the undersigned “standby counsel,” without objection from the Assistant United States Attorney, hereby moves to continue the above-scheduled matter, currently set for Docket Call/Trial on November 7, 2019 at 9:00 a.m. In support of this motion, the Defendant states the following:

1. That the Defendant was Indicted on August 8, 2018 and charged with Attempting to Evade or Defeat Tax by Evasion of Payment (26 U.S.C. § 7201) and Interference with the Administration of Internal Revenue Laws (26 U.S.C. § 7212). Thereafter, on August 10, 2018, he had his Initial Appearance before the Honorable Dennis Lee Howell, U.S. Magistrate Judge. He was advised then of his counsel rights and elected to proceed pro se, and requested and was denied standby counsel. He was ordered released on conditions pending trial that same date. Also on August 10, 2018, Judge Howell issued an oral order granting a continuance pursuant to 18 U.S.C. § 3161(c)(2), moving the Docket Call/Trial from September 4, 2018 at 9:00 a.m. to November 7, 2018 at 9:00 a.m.

2. That on September 14, 2018, the Court held a Motions Hearing regarding motions filed by both parties, with Judge Howell later denying both motions by written Order on September 19, 2018. A Pretrial Release Violation Hearing was held on October 24, 2018 before the Honorable David C. Keesler, U.S. Magistrate Judge, which resulted in a violation being found, but no revocation of conditions of pretrial release.

Additionally, the Government hand delivered discovery to the Defendant at that hearing (they had previously sent him a letter on August 17, 2018 advising him on how to pick up discovery) and the Court ordered the appointment of standby counsel. The undersigned was assigned the role of standby counsel for the Defendant on Monday, October 29, 2018 and was able to pick up discovery in this case on Tuesday afternoon, October 30, 2018. Discovery consists of three CDs, one of which contains phone calls and voicemails, and the other two that contain a total of 15,317 pages of discovery.

3. Upon receiving my appointment as standby counsel, I immediately reached out to contact the Defendant on October 29, 2018. We were able to talk by phone on Tuesday evening, October 30, 2018 and we were able then to schedule our first in-person meeting for Friday morning, November 2, 2018. An earlier meeting was not possible due to the Defendant's work schedule. During our phone call, I was able to give a "big picture" overview of the role of standby counsel and ask questions to determine the extent of trial preparation accomplished to date. It was my assessment that the Defendant did not fully understand the total amount of and areas of preparation necessary to conduct a jury trial in federal criminal court and it will be my goal during tomorrow's meeting to cover issues related to proposed voir dire, proposed instructions, and how evidence is presented and what evidence to present. The latter will be in general terms only because neither the Defendant nor I have had a chance to review the voluminous discovery we have both recently received.

4. On Wednesday afternoon, October 31, 2018, Assistant United States Attorney Daniel Bradley, the prosecutor in this matter, advised me that a case slated for trial before the Defendant's trial had dropped out and that we would be starting the Defendant's trial the week of November 7, 2018. I discussed the foregoing matter and issues by phone with the Defendant later that evening and the Defendant agreed that we would need a continuance to at least the Court's next trial calendar to be properly prepared for trial. Last night, I contacted Mr. Bradley to advise him of our desire to seek

a continuance and he indicated the Government would have no objection to such a motion.

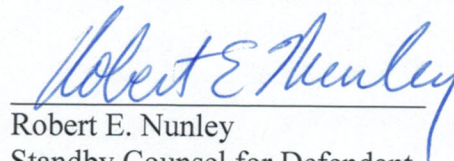
5. The parties presently have a Pretrial Conference scheduled with the Court on Tuesday, November 6, 2018 at 2:00 p.m. It is the desire of the parties that the Pretrial Conference still be held at that time. My review of the Docket Sheet reveals that the Government's Motion in Limine, filed on September 26, 2018, remains to be resolved by the Court. From what I understand of the posture of the parties in this case, resolution of that motion could dramatically affect the preparation of a defense in this matter.

6. The undersigned counsel submits that the granting of this motion to continue could possibly result in the savings of limited judicial resources through the smoother progression to completion of this matter. The additional time requested would be required to provide the undersigned "standby counsel" and the Defendant the time necessary to prepare for a trial and provide the Defendant with effective "standby counsel." The ends of justice served by the granting of this motion outweigh the interests of the public and the Defendant in a speedy trial.

WHEREFORE, the Defendant, through "standby counsel" and without objection from the Government, requests that his Docket Call/Trial, presently scheduled for the November 7, 2018 Docket Call of criminal court be continued to one of the Court's later terms of criminal court. Further, that the presently scheduled Pretrial Conference, scheduled for Tuesday, November 6, 2018 at 2:00 p.m., be held as previously planned.

Respectfully submitted, this the 1st day of November, 2018.

NUNLEY & ASSOCIATES, P.L.L.C.



Robert E. Nunley
Standby Counsel for Defendant
P.O. Box 111
Green Mountain, NC 28740
(919) 616-8545

North Carolina Bar # 25905
marinejudge@gmail.com

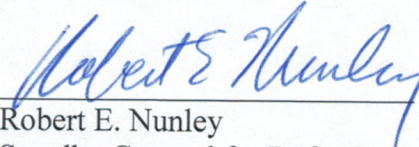
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served via CM/ECF upon:

Daniel V. Bradley
Assistant United States Attorney for the Western District of North Carolina
United States Attorney's Office
Federal Courthouse
100 Otis Street
Asheville, NC 28801

Additionally, a copy of the foregoing was served on the Defendant via email this date and a copy will be hand-delivered to the Defendant tomorrow morning.

Respectfully submitted, this the 1st day of November, 2018.


Robert E. Nunley
Standby Counsel for Defendant